

PUBLIC LAW BOARD NO. 5850

Award No. 379
Case No. 379

PARTIES TO DISPUTE:

(Brotherhood of Maintenance of Way Employees

(The Burlington Northern Santa Fe Railroad (Former
(ATSF Railway Company)

STATEMENT OF CLAIM:

1. The Carrier violated the Agreement when Claimant Seth B. Sonny was dismissed by letter dated April 1, 2009, for violation of MOWOR Rules 1.5 Drugs and Alcohol concerning his second positive test within a ten year period on December 9, 2008.
2. The dismissal of Claimant is harsh, extreme and in total abuse of discretion. The Organization respectfully requests that Mr. Sonny be reinstated to his former position with seniority, vacation and all other rights unimpaired and compensated for all wage loss and/or otherwise made whole beginning December 9, 2008, continuing forward.

FINDINGS

Upon the whole record and all the evidence, the Board finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended. Further, the Board is duly constituted by Agreement, has jurisdiction of the Parties and of the subject matter, and the Parties to this dispute were given due notice of the hearing thereon.

There was a minor accident in which on-track machinery collided with a small trailer. The responsible crewmembers were tested for banned substances in accordance with the rules. Subsequent to Claimant's positive result, his second in a 10 year period, an Investigation was scheduled.

"You are hereby notified to attend formal Investigation...on Thursday, December 18, 2008, to develop the facts and circumstances concerning your positive Reasonable Cause test, while working as Machine Operator,

on December 9, 2008, on the Brookfield Sub Division, and your alleged violation of BNSF Policy on the use of Alcohol and Drugs, dated September 1, 2003."

The Investigation was held on March 4, 2009 after a number of agreed to postponement requests. Claimant was properly notified but he elected, at his peril, not to attend the Investigation. The Carrier proceeded with the Investigation without Claimant. Under these circumstances, Carrier's proof of its charges went unchallenged.

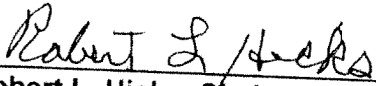
The Carrier's decision to dismiss is supported by this Board.

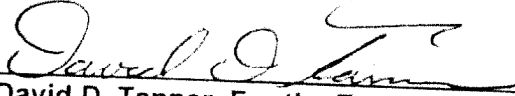
AWARD

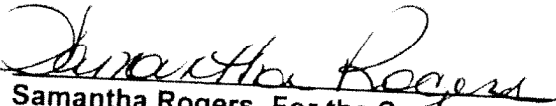
Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.


Robert L. Hicks, Chairman & Neutral Member


David D. Tanner, For the Employees


Samantha Rogers, For the Carrier

Dated: 2/18/11